

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CESAR ANDUJAR,

Plaintiff,

-v-

9:09-CV-489 (NAM/DRH)

**BRIAN FISCHER, Commissioner of New York State
Department of Corrections; and MELVIN WILLIAMS,
Superintendent of Willard Drug Treatment Center,**

Defendants.

APPEARANCES:

CESAR ANDUJAR
08-A-6417
Washington Correctional Facility
Post Office Box 180, 72 Lock 11 Lane
Comstock, New York 12821
Plaintiff *Pro Se*

HON. ANDREW M. CUOMO, Attorney General for the State of New York
JAMES SEAMAN, Esq., Assistant Attorney General
The Capitol
Albany, New York 12224-0341
Attorney for Defendants

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff, an inmate in the custody of the New York State Department of Correctional Services ("DOCS"), brought this action pursuant to 42 U.S.C. § 1983 alleging that defendants violated his constitutional rights under the Fourteenth Amendment. Defendants moved to dismiss the complaint (Dkt. No. 16) and plaintiff moved (Dkt. No. 19) to amend his complaint.

United States Magistrate Judge David R. Homer issued a Report and Recommendation

and Order (Dkt. No. 21) in which he (1) recommended that defendants' motion to dismiss be granted, and (2) denied plaintiff's motion to file an amended complaint. Plaintiff objected to the recommendation that the case be dismissed; appealed the denial of his motion to amend the complaint; and requested appointment of counsel (Dkt. Nos. 22, 23).

The Court first considers the recommendation that the motion to dismiss be granted. Where, as here, a party interposes only general objections to a report and recommendation, the Court reviews for clear error or manifest injustice. *See Davis v. Chapple*, 2010 WL 145298, *2 (N.D.N.Y. Jan. 8, 2010), *Brown v. Peters*, 1997 WL 599355, *2-* 3 (N.D.N.Y.), *aff'd without op.*, 175 F.3d 1007 (2d Cir. 1999). The Court finds no clear error or manifest injustice and no basis to reject the Report and Recommendation.

Turning to consider Magistrate Judge Homer's order denying leave to serve an amended complaint, the Court notes that such an order is generally viewed as a non-dispositive order reviewable under the "clearly erroneous or contrary to law" standard, *see, e.g., Sanrio Co., Ltd. v. Epic Trading, Inc.*, 2005 WL 1705746 (E.D.N.Y. 2005); *Lyondell-Citgo Refining v. Petroleos De Venezuela*, 2005 WL 883485 at *3 (S.D.N.Y. 2005); *see also Kilcullen v. New York State Dep't of Transp.*, 55 Fed. Appx. 583, 584-85 (2d Cir.2003); in any event, even if reviewed *de novo*, the order is correct.

Plaintiff's request for appointment of counsel is denied as moot.

It is therefore

ORDERED that United States Magistrate Judge David R. Homer's Report and Recommendation and Order (Dkt. No. 21) is accepted; and it is further

ORDERED that defendants' motion (Dkt. No. 16) is granted and the action is dismissed;

and it is further

ORDERED that plaintiff's appeal (Dkt. No. 23) is denied and Magistrate Judge Homer's Order denying leave to amend the complaint (Dkt. No. 21) is affirmed; and it is further

ORDERED that plaintiff's request (Dkt. No. 22) for appointment of counsel is denied as moot.

IT IS SO ORDERED.

March 2, 2010
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge

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